IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: O R D E R ::

Suleman Khan Vs. State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.6850/2005.

Date of Order :: 4th December 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. K.K. Shah, for the petitioner.
Mr. Rameshwar Dave, Dy.G.A., for the respondents.

Reportable

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BY THE COURT:

By filing this petition for writ on 26.11.2005 and stating it to be a matter of "Post Termination Benefits", the petitioner prayed for the following relief:

> "It is, therefore, most respectfully prayed that this writ petition may kindly be allowed and by issuance of an appropriate writ, order or direction the respondents may please be directed to pay the Pension, Gratuity, Provident Fund and other consequential benefits to the petitioner."

After a reference to the facts regarding his initial appointment as teacher on temporary basis by Panchayat Samiti, Chohtan on 04.09.1974 and having continued till 01.09.1976 with intermittent breaks, the petitioner has averred that he was duly selected by the Rajasthan Public Service

Commission as teacher and was appointed on 06.01.1977 for a period of 2 years on probation and, upon satisfactory completion of probation period, he was confirmed w.e.f. 06.01.1979. According to the petitioner, while he was continuing in services, in the month of January 1991, he came in contact of a 'Fakir' and “under his influence the petitioner lost his mental balance and did whatever the 'Fakir' asked him to do”; and that “the petitioner received a letter from the Department to join duty but Fakir asked him to write back whatever he asked”. Further, according to the petitioner, after death of the said 'Fakir' in the month of August 2005, he came out of the state of *deja vu* and found himself staying at some Mazar and was informed by the people of his having stayed thereat for so many years; that he rushed back to his house and informed the family about the state he was in; and that the family was already aware of such state as almost all the members had tried to reason out with him at Mazar to come back but he had even refused to recognise them.

The petitioner further averred that upon asking of the members of the family, he attempted to join his services but was informed that his services had already been terminated; that he was given copies of all the correspondence made by the Department during his absence from duty and he was also informed of the notices issued to him for joining duty and that to one of the notices, his brother replied about his suffering from

mental disorder and being treated upon, and that he would join on being cured. The petitioner while placing on record a copy of the notice dated 27/30.12.1999 along with statement of allegations as Annexure-2 stated that upon not receiving any reply, the authority proceeded to terminate his service under Section 91(3) of the Rajasthan Panchayati Raj Act, 1994 read with Rule 299 (2) of the Rajasthan Panchayati Raj Rules, 1996 ('the Rules of 1996'); that the approval of the District Establishment Committee was sought and the respondent No.2 authorised the respondent No.3 to terminate the services of the petitioner under a communication dated 12.05.2000 (Annex.3); and that the respondent No.3 terminated the services of the petitioner w.e.f. 22.05.2000 (Annex.4). The petitioner, then, averred in paragraph 12 of the writ petition thus:

> "12. That after receipt of termination order Anexure-4, the petitioner requested the respondent No.-3 to grant him pension and payment of all other benefits which he was entitled for, but he was refused the same."

With the aforesaid averments and stating himself being aggrieved of non-payment of the dues in terms of balance of salary, provident fund, gratuity and pension, the petitioner filed the writ petition with the submissions that the provisions of Rajasthan Service Rules are applicable for the employees of the Rajasthan Panchayati Raj, as envisaged under Rule 293 of the Rules of 1996 and the petitioner having completed qualifying

service, was entitled for pension and was also entitled for gratuity etc. and non-payment thereof was violative of Articles 21 and 300-A of the Constitution of India.

A show cause notice was issued in this writ petition on 29.11.2005 and a reply was filed on behalf of the respondents on 07.11.2006 with the submissions, inter alia, that despite communications, the petitioner did not join duty nor made any application for leave; that the case of the petitioner was sent to Zila Parishad for necessary action and, after the Additional Chief Executive Officer, Zila Parishad, Barmer accorded sanction for termination of services on 12.05.2000 because of absence of the petitioner from duty, the respondent No.3 terminated his services by the order dated 22.05.2000. The respondents also contended that the petitioner was not entitled for any payment as claimed nor did he make any application claiming such payment. The respondents have placed on record copies of the letters dated 25.09.1992 and 21.01.1993 (Annex. R/1 & R/2) informing the petitioner of his unauthorised absence and of the proposal to take proceedings against him.

About a week before filing of the reply by the respondents, the petitioner made an application on 31.10.2006 seeking to amend the writ petition with the submissions that he stood advised that his services were terminated without following due process of law and, thus, wanted to challenge the order of

termination dated 22.05.2000 (Annex.4). The application for amendment was allowed on 13.11.2006 and the amended petition already filed was taken on record. By way of amended writ petition, while reiterating the aforesaid averments regarding his appointment, his having been under the influence of 'Fakir', his allegedly coming out of the state of *deja vu* and attempting to join the services, and his having been informed about termination order, the petitioner has taken the averments, now, in the amended writ petition in paragraph 12 thus :

> "12. That after receipt of termination order annex.4 the petitioner approached the respondent No.3 and requested for details of any inquiry conducted against the petitioner but he was informed that since he was absent for such a long period there was no requirement of any inquiry."

The petitioner has taken the grounds in the amended writ petition that the order of termination was illegal as the same was passed without following the procedure laid down by law; that there is no automatic termination of a person from services without holding an inquiry and without giving him a reasonable opportunity of showing cause; that there had not been any inquiry and no show cause notice was ever served; that every government employee is protected under Article 311 of the Constitution of India and opportunity of hearing is a mandatory requirement of law; that the petitioner was given notice to join but no notice for termination of service was ever served; that the

petitioner was given a charge-sheet but on the charges, no inquiry whatsoever, not even ex parte inquiry, was conducted and without holding inquiry, his services were terminated merely on the ground of absence for a long period; that it was evident on the record that the petitioner was mentally sick and his family was trying to get him cured and under such circumstances when the petitioner became fit to resume duty, a proper inquiry should have been conducted before passing any impugned order; that the address of the petitioner has been annotated in the order of termination but the same was never communicated and the petitioner never received the same. On the premise aforesaid, the petitioner has prayed the relief in the amended writ in the following terms:-

> "It is, therefore, most respectfully prayed that this writ petition may kindly be allowed with costs and by issuance of an appropriate writ, order or direction the impugned order annex.4 dated 22.5.2000 may kindly be quashed and set aside. It is further prayed that the petitioner may kindly be treated on duty and be allowed all consequential benefits as if order of termination was never passed."

The respondents have filed a reply to the amended writ petition reiterating the stand that the petitioner was served with notices to join the services and submitted that a notice was also published in newspapers on 20.11.1994 but the petitioner did not join on duty; that the charge-sheet and memorandum of charges were sent at the residential address of the petitioner but the

petitioner did not submit any reply and hence the matter was referred to the District Establishment Committee and thereafter services of the petitioner were terminated after approval from the District Establishment Committee.

Arguing for the petitioner, learned counsel Mr. K.K. Shah strenuously contended that the termination of services of the petitioner in the present case remains squarely contrary to law and cannot be sustained. According to the learned counsel, the petitioner has made clear the peculiarity of facts and the unfortunate circumstances he had gone through, of his having lost mental balance and having remained in a state of *deja vu* for about 14 years and yet, after coming out of such state, the petitioner approached the authorities and his case ought to have been considered by the authorities in the right perspective. Learned counsel submitted that the order of termination as made against the petitioner remains squarely contrary to law; that even when the petitioner was not joining services, it was available with the Department as a fact that his family was trying to have him cured; that even if the petitioner did not join on duty, the necessity of holding a proper inquiry was not obviated and the order of termination passed without inquiry cannot be sustained. Learned counsel also submitted that the order of termination having not been communicated to the petitioner, never become effective. Learned counsel has referred to and relied upon the

decisions of the Hon'ble Supreme Court in the case of Jai Shanker Vs. State of Rajasthan : AIR 1966 SC 492, State of Punjab Vs. Amar Singh Harika : AIR 1966 SC 1313, and G.T. Lad & Ors. Vs. Chemical and Fibres of India Ltd. : (1979) 1 SCC 590.

Per contra, learned Deputy Government Advocate Mr. Rameshwar Dave contended that the present set of facts and circumstances clearly make out a case of abandonment of service and the only option available with the Department was to terminate the services of the petitioner after he failed to join on duty despite notices and after he failed to respond to the charge-sheet. Learned Deputy Government Advocate has referred to and relied upon the decisions of the Hon'ble Supreme Court in the case of Aligarh Muslim University & Ors. Vs. Mansoor Ali Khan: (2000) 7 SCC 529, Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association & Anr. : (2000) 5 SCC 65, and State of Rajasthan & Anr. Vs. Mohd. Ayub Naz : (2006) 1 SCC 589.

Having given a thoughtful consideration to the rival submissions and having examined the record of the case, this Court is clearly of opinion that this writ petition remains bereft of substance and the petitioner is not entitled for any relief for more than one reason.

In the very first place, it is required to be pointed out that

the very foundation of the case of the petitioner is shrouded in so much of obscurity that it is difficult to even proceed on the basis of the suggestion as made by the petitioner. It is not in dispute that since the month of January 1991, the petitioner remained absent from duty without any application for leave and did not join despite several notices including the notice published in the newspaper. The petitioner has averred that from the year 1991 to the year 2005, he remained under the influence of so-called 'Fakir'. Contrary to the suggestions as made by the petitioner, regarding his being away and detached from his family, it appears from the particulars stated in the charge-sheet (Annex.2) that in response to a notice dated 18.04.1994, brother of the petitioner stated that the petitioner was mentally sick and was being taken to Chohtan for the purpose of treatment and shall join after being cured. It is also noticed that in response to the notice dated 21.01.1993, the petitioner stated that he was not well in health and was proceeding for treatment and shall present himself on being well. The petitioner has made a cryptic averment that he received a letter from the Department to join duty but 'Fakir' asked him to write back whatever he asked. It is difficult to accept even for assumption that the petitioner was under any illusion or was in a mentally unfit condition while stating such reply to the department. The fundamental of the matter remains that if the petitioner had undergone any such

mental blockade or illusion or trauma or imbalance, and allegedly came out of the alleged state of *deja vu* in the month of August 2005, nothing prevented the petitioner from getting himself medically checked up and producing some relevant material in corroboration of such assertions about his mental condition. The story as suggested by the petitioner does not appear worth even a fairy tale; and could least be received for the purpose of drawing any legal inference. This Court has no hesitation in concluding that the petitioner had voluntarily abandoned the job at his sweet will and desire; and then, by way of this petition, has only made an attempt to take a chance to litigate against the Department concerned. The present one being clearly a case of voluntary relinquishment of the job, the petitioner is not entitled for any relief in the extra-ordinary writ jurisdiction.

That the petitioner has merely attempted to take a chance in litigation is more than clear from irreconcilable averments taken by the petitioner particularly in paragraph 12 of the writ petition as originally filed and as amended. Both the averments have been reproduced hereinbefore and it is apparent that in the first instance, the petitioner suggested before this Court that after receipt of the termination order he requested the respondent No.3 for grant of pension and other benefits; and filed the writ petition only with the prayer for directions to the respondents to make payment of pension, gratuity etc., while stating that he was

aggrieved of denial of such payment. About a year later, the petitioner would choose to take a different averment that after receipt of termination order, he requested for details of inquiry conducted but was informed that for his absence for long period, there was no requirement of any inquiry. The fact situation as suggested by the petitioner is itself shrouded in obscurity as noted above and then, for the shifting stand taken by the petitioner in the original writ petition and in the amended petition about the request that he made upon receipt of the termination order, moreover fortifies the conclusion that this petition is noting but an adventure into litigation with a loosely concocted story.

Even the hyper-technical grounds as suggested on behalf of the petitioner are of no assistance in the fact situation of the present case. When the fact of abandonment of services as a question of intention is to be determined in the light of the surrounding circumstances as observed by the Hon'ble Supreme Court in the case of G.T. Lad (supra), the surrounding circumstances of the present case with the admitted fact situation show nothing but a specific intention to abandon the service. Admittedly, for good 14 years, the petitioner choose not to attend on the duties and, as noticed above, without any valid reason. The reason as stated now in the year 2005 in this petition, to somehow resurrect the concluded matter, where the petitioner abandoned the job in the year 1991, and where the

Department after taking all care to serve him notices for joining and to serve him charge-sheet, ultimately passed the order of termination as late as on 22.05.2000, could only be said to be an after-thought, rather an eyewash and a futile attempt at abuse of the process of law.

The case of Jai Shanker (supra) has no application to the case of the petitioner. It is not the case that the Department has not given him any notice before making the order of termination. On the contrary, the record is replete with such notices like the notices dated 25.09.1992 (Annex. R/1) and dated 21.01.1993 (Annex. R/2) asking the petitioner to join; and then, the petitioner was served with further notice whereupon his brother stated about his being in a sick condition, and then, yet another notice was published in the newspaper on 20.11.1994. Still, the department issued the petitioner a charge-sheet on 27/30.12.1999 (Annex.2) before proceeding further; and, admittedly, the petitioner did not respond to the same either. The Department was thereafter left with no alternative but to pass appropriate order; and the only appropriate order in this case could have been of termination of services.

It may be pointed out that the principles of natural justice as sought to be relied upon by the petitioner are not a matter of mere form nor every matter of judicial review could proceed on the assumption that the breach of principles of natural justice is

itself of prejudice; as pointed out by the Hon'ble Supreme Court in the case of Aligarh Muslim University (supra) that,-

> "21. As pointed recently in M.C. Mehta v. Union of India there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Govt. of A.P. it it not necessary to quash the order merely because of violation of principles of natural justice.
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> 22. In M.C. Mehta it was pointed out that at one time, it was held in Ridge v. Baldwin that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S.L. Kappor v. Jagmohan Chinnappa Reddy, J. followed Ridge v. Baldwin and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.
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> 23. Chinnappa Reddy, J. in S.L. Kapoor case laid down two exceptions (at SCC p.395) namely, if upon *admitted or indisputable* facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care care must be taken in applying this exception."

In the present case, even if it be assumed that the Department had not conducted any inquiry, this Court is clearly of opinion that such inquiry could only have been of empty formality when the factum of abandonment of services by the petitioner was even otherwise clear on the face of the record; and, even after inquiry, only the order of removal from service could have been passed as observed by the Hon'ble Supreme Court in Mohd. Ayub Naz's case (supra). Admittedly, at the time of passing of the termination order on 22.05.2000 the petitioner had not attended on duty for over 9 years and had failed to respond properly to the notices served/published by the department; and then, had not answered the charge-sheet. There arise no question of any prejudice in the fact situation of the present case; rather this court is satisfied that the department has not committed any illegality or even irregularity in passing the order of termination of service.

Learned counsel for the petitioner suggested that the decision in Jai Shanker's case having not been taken into consideration by the Hon'ble Supreme Court in Mohd. Ayub Naz's case, the principles stated in the later decision in Mohd. Ayub Naz cannot be applied as binding precedent particularly contrary to the principles in Jai Shanker. The submission is not well founded. In Jai Shanker's case, the Hon'ble Supreme Court

has dealt with a situation where the incumbent was discharged from service without any notice. In the case of Mohd. Ayub Naz, the Hon'ble Supreme Court has considered the matter on the question of punishment for absenteeism and has held that in case of willful absence from duty for three years without intimation, the only proper punishment is of removal from service. In the present case, situation is moreover worse with the petitioner having remained absent for about 9 years at the time of passing of the order of termination.

Learned counsel for the petitioner also attempted to submit in relation to the Aligarh Muslim University's case that therein a warning was given to the employee concerned but in the present case no such warning was given. The contention is not correct on facts. The fact situation of the present case has been condensed in the statement of charges pointing out the petitioner's continuous absence despite repeat notices and warnings. The petitioner is not in a position even to put a primary rebuttal to the statement of charges that reads thus:

> "आरौप सं0 1-
> ========== कि आप जनवरी 91 से लगातार अपनी ड्यूटी पर से बिना किसी पूर्व सूचना के एवं अवकाश स्वीकृत कराये आप अपनी स्वेच्छा से अनुपस्थित रहे हैं जो कि पूर्णतया अपने कर्तव्य के प्रति उदासीनता का द्योतक है ।

आरौप सं0 2-

========== कि आपको कार्यालय पत्रांक 2823-24 दिनांक 23-9-92 द्वारा आपको अपनी ड्यूटी पर उपस्थित होने हेतु नोटिस जारी किया जाकर उसमें 10 दिन का समय के भीतर उपस्थित होकर वजह जाहिर करने हेतु लिखा गया उसके बावजूद भी आप द्वारा उपस्थिति नहीं दी गई जो कि अनुशासहीनता की श्रेणी में आता है ।

आरौप सं0 3-

========== कि आपको पत्रांक 4368 दिनांक 21-1-93 के द्वारा पुन: ड्यूटी पर उपस्थित होने हेतु नोटिस दिया गया जिसका आप द्वारा रजिस्टर्ड पत्र के द्वारा जवाब भेजा गया कि अभी मेरा स्वास्थ्य ठीक नहीं है उसके कारण मैं ईलाज कराने जा रहा हूं एवं स्वास्थ्य ठीक होने पर मैं उपस्थित हो जाऊंगा । तत्पश्चात भी आप द्वारा अपनी उपस्थिति नहीं दी गई एवं आदेशों की अवहेलना की गई है ।

आरौप सं0 4-

========== कि आपको कार्यालय पत्रांक 1864 दिनांक 18-4-94 द्वारा आपको उपस्थित होने हेतु पुन: नोटिस जारी किया । उसके बावजूद भी आप अपने कर्तव्य के प्रति उपस्थित नहीं हुए । एवं आपके भाई श्री उम्मेदअली द्वारा दिनांक 29-4-94 को जवाब प्रस्तुत किया गया कि वर्तमान में श्री सुलेमान मानसिक रूप से पीड़ीत है एवं इसका ईलाज कराने चौहटन लेकर आये हैं स्वास्थ्य ठीक होते ही इन्हें उपस्थित कर दिया जावेगा उसके बाद भी आपकी आपकी उपस्थिति इस कार्यालय में दर्ज नहीं हुई है । इस प्रकार आप द्वारा

अपने कर्तव्य के प्रति पूर्णतया लापरवाही बरती गई है क्यों न आपको स्वेच्छा से अनुंपस्थित मानते हुए एक तरफा कार्यवाही की जावे ।

आरौप सं0 5-

========== कि कार्यालय आदेश 5862 दिनांक 8-11-94 द्वारा दिनांक - 20-11-94 को राजस्थान पत्रिका में भी आपको अंतिम नोटिस जारी किया जाकर छाया किया गया कि आप अपनी ड्यूटी पर उपस्थित नहीं होने से आपकी सेवाएं समाप्त कर दी जायेगी । तत्पश्चात भी आप द्वारा अपने कर्तव्य पर उपस्थित नहीं हुए है अत: यह समझा जावे कि आप नौकरी करने के इच्छुक नहीं है एवं क्यों न आपकी सेवाएं समाप्त करने की कार्यवाही की जावे ।"

In view of the serious nature of charges and then, the story put forward by him being not worthy of credence, and being otherwise guilty of gross delay and latches too while attempting to put a challenge in the year 2006 to the termination order made as back as in the year 2000, the petitioner is not entitled for any relief.

The submission as made on behalf of the petitioner of the order of termination not becoming effective without communication with reference to the decision in Amar Singh Harika's case (supra) has no bearing or relevance to the fact situation of the present case. When the petitioner by his own conduct has brought about a situation where he was absent from

duty for a long period and did not respond to the notices and charge-sheet and had made communication with himself impossible, the principles in Amar Singh Harika cannot be pressed into service by the petitioner. However, the authority making the order of termination has not kept the order to itself or on its file only but has endorsed the copies thereof to all the concerned including the petitioner as is apparent from the endorsements at the order Annexure-4. The petitioner could also not make a specific averment that the order was not sent to his known address; but choose to take a cryptic averment that he did not receive the same though his address was annotated in the order of termination.

Having examined the matter in its totality, this Court is satisfied that the petition like the present one could only be said to be an attempt at taking a chance at litigation with a made-up story; and deserves to be dismissed with costs.

The petition is, therefore, dismissed with costs quantified at Rs.3,300/-.

(DINESH MAHESHWARI), J.

Mohan/